

NO.42209 -3 -II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II

SHEILA VERHALEN,

Respondent,

v.

TRAVIS WRIGHT ,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. COUNTER STATEMENT OF THE ISSUES	-1-
II. STATEMENT OF THE CASE	-1-
III. ARGUMENT	-5-
1. The trial court did not deny Mr. Wright's due process by signing a habeas corpus order because Mr. Wright was provided with notice of the issue and was given an opportunity to be heard	-5-
2. The trial court did not err in granting attorney fees to Ms. Verhalen because Mr. Wright violated the parenting plan and additional attorney fees should be awarded to Ms. Verhalen which were incurred to respond to this frivolous appeal.	-25-
IV. CONCLUSION	-27-

TABLE OF AUTHORITIES

<u>WASHINGTON STATE CASES</u>	<u>Page</u>
<i>Coggle v. Snow</i> , 56 Wn. App. 499, 504 P.2d 554 (1990)	-5-, -6-
<i>Reid v. Dalton</i> , 124 Wn.App. 113, 100 P.3d 349 (2004))	-26-
<i>Schreifels v. Schreifels</i> , 47 Wash.2d 409, 287 P.2d 1001 (1955)	-15-, -24-, -25-
<i>State Ex Rel. Citizens Against Tolls (CAT) v. Murphy</i> , 151 Wn.2d 226, 88 P.3d 375 (2004)	-16-, -17-
<i>State Ex. Rel Ward Et Ux. V. Superior Court of Washington State, In And for Pierce County</i> , 38 Wash. 2d 431, 1230 P.2d 302 (1951)	-20-
<i>State v. Deschler</i> , 114 Wash. 507, 195 P.2 226 (1921)	-21-
<i>Viereck v. Sullivan v. Nichols</i> , 77 Wash 313(1914)	-21-
<hr/> <u>STATE STATUTES</u> <hr/>	
RCW 4.84.185	-26-
RCW 7.36.404	-8-, -24-
<hr/> <u>COURT RULES</u> <hr/>	
CR6	- 8, 14, 16-
KCLR 77(k)(10)(c)	-14 -
RAP 18.9(a)	-27 -
<hr/> <u>OTHER AUTHORITY</u> <hr/>	
Washington Practice, Volume 3A by Tegland.	-8-

I. COUNTER STATEMENT OF THE ISSUES

1. Whether the trial Court violated Mr. Wright's right to due process when Mr. Wright was aware of the issue regarding the return of the child, was given notice of the hearings seeking the return of the child, had an opportunity to address the Court regarding the motion and voluntarily returned the child?
2. Whether the trial Court erred in ordering attorney fees when Ms. Verhalen incurred attorney fees to enforce the parenting plan Mr. Wright refused to follow and whether Ms. Verhalen should be awarded additional attorney fees incurred to respond to this frivolous appeal?

II. STATEMENT OF THE CASE

The parties have one child, MW who was age 11 at the time of the hearings at issue. CP 7 A final parenting plan was entered on November 16, 2007 CP 7. The pertinent language of section 3.11 of the parenting plan is not in dispute. The plan reads as follows:

“The receiving parent (or designee) will accompany child

as required by airline. The parents may designate a responsible adult to accompany the child during travel as required by airline regulations." CP 10

Pursuant to the parenting plan MW resides primarily with her mother in Georgia and has visitation with her father in Washington State. CP 11. Prior to the hearing at issue MW had been with Mr. Wright for her Spring Break pursuant to the parenting plan. CP 3 Ms. Verhalen initially informed Mr. Wright that MW would be flying as an unaccompanied minor on April 1, 2011. CP 106, 87, 93. On April 3 Mr. Wright sent an email to Ms. Verhalen indicating he would not be returning MW unless a ticket was purchased by Ms. Verhalen for an adult to travel with MW. CP 95 The parenting plan does not require any notice as to whether MW would be flying with an adult or as an unaccompanied minor. CP 7-15.

Mr. Wright refused to allow MW to return to her mother until she purchased a ticket for an adult to travel with MW on the flight back to her mother's residence. CP 3, CP 147-148. Mr. Wright alleged his refusal to return MW was based on his interpretation of the parenting plan. Id. Under his interpretation, the plan required an adult known to MW accompany her on the flight back to her mother's residence. Id. Ms. Verhalen had made arrangements for MW to travel

as an unaccompanied minor. Id. Mr. Wright had been made aware of the arrangements made for MW prior to the filing of the motion for a writ of habeas corpus. CP 3, 16-20. Mr. Wright refused to return MW to her mother. CP 3, CP 148. Ms. Verhalen is in a difficult financial situation, partly due to Mr. Wright's lack of child support payments and could not meet Mr. Wright's demands for her to purchase a ticket for an adult to travel with MW. CP 3-4. MW was to resume school following the break on April 6, 2011. CP 149 Ms. Verhalen proceeded with presenting a motion for a writ of habeas corpus on April 4, 2011. CP 2-21.

Representatives for both parties spoke and after an unsuccessful attempt to secure the return of the child to her mother, and notice was provided that Ms. Verhalen would be seeking a writ of habeas corpus to require the return of the child. CP 4. The time and place of the hearing were provided to Mr. Boldt's office. CP 148-149. Counsel for Mr. Boldt asked for a continuance of the hearing and filed a request to reschedule the hearing. CP 1. The request does not provide any indication of when Mr. Boldt would be available for a hearing. CP 1. Counsel for Ms. Verhalen presented the request to the Court. RP 2. Judge Spearman denied the request for a continuance.

RP 3. Another hearing was scheduled for April 4, 2011.

Mr. Wright did not appear at the 1:30 hearing. RP 2-6. However, counsel for Ms. Verhalen and Mr. Wright met in the Courthouse following the hearing. CP 89. Mr. Wright agreed to bring the child to an ex parte hearing that afternoon at 3:30pm. RP 6-7. Mr. Wright left the clerk's office before the copies of the documents previously entered had been made by the clerk. CP 149.

At the April 4, 2011 3:30 hearing Judge Spearman issued an order requiring Mr. Wright to return the child. RP 5. Mr. Wright was present at the hearing and argued on his behalf. RP 6-14, CP 149. Mr. Wright agreed to return MW to Ms. Verhalen. RP 7. No request was made for a continuance. Id. Attorney fees in the amount of \$750 were assessed. RP 13.

Mr. Wright presented a motion for Reconsideration which was filed on April 14, 2011, CP 32. A number of declarations were submitted for the motion for reconsideration including Declaration of Travis Wright (CP 86); Declaration of Amy Rau (CP 101); Declaration of Tiffany Simmons (CP 110) and Declaration of Cindy Wright (CP 115). Judge Spearman issued an order for responsive briefing to address the motion for reconsideration. CP 119. A memorandum in

response to the motion for reconsideration (CP 124); declaration of Ms. Verhalen (CP 146); and declaration of attorney fees (CP 152) were filed in response to the motion for reconsideration. Ms. Verhalen requested attorney fees in the amount of \$1250. CP 150 Judge Spearman denied the Motion for Reconsideration. CP 154-156. Judge Spearman denied Ms. Verhalen's request for attorney fees. CP156. Ms. Verhalen filed a motion for reconsideration on the issue of attorney fees which was denied.

III. ARGUMENT

1. THE TRIAL COURT DID NOT DENY MR. WRIGHT'S DUE PROCESS BY SIGNING A HABEAS CORPUS ORDER BECAUSE MR. WRIGHT WAS PROVIDED WITH NOTICE OF THE ISSUE AND WAS GIVEN AN OPPORTUNITY TO BE HEARD.

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ORDERING THE CHILD TO BE RETURNED TO MS. VERHALEN

The Appellant appears to be assigning error to the trial court's denial of his request for a continuance. The appellant has not identified the standard for review for such a claim. A trial court has

broad discretion to grant or deny a continuance and the Court's decision will only be overturned for a manifest abuse of discretion. *Coggle v. Snow*, 56 Wn. App. 499, 504 784 P.2d 554 (1990).

In this case, the decision to deny the request for a continuance was appropriate for a number of reasons. First, Mr. Wright indicated that he was not going to return the child as required by the parenting plan, secondly, the child was to start school and would miss the start of school if this issue had not been addressed immediately, thirdly the request for a continuance did not specify when counsel for Mr. Wright would be available. Since this was a time sensitive issue, the Court appropriately denied the request for a continuance. Mr. Wright had the ability to present argument before the Court made the ruling requiring return of the child. The arguments made by Mr. Wright have been consistent during each stage of the procedures in this matter. Both Mr. Wright and counsel misconstrue the parenting plan to add requirements that are contrary to the plain language of the parenting plan. If the Court had granted the indefinite continuance requested by Mr. Boldt, the child would have missed school to her detriment. The Court made the correct decision to proceed in this matter.

Mr. Wright refused to return the child unless his interpretation of the parenting plan was satisfied. CP 3, 95, 147-148. As previously stated, Mr. Wright interpreted the parenting plan to require Ms. Verhalen to purchase an additional ticket for an adult to travel with MW. CP 9, 147-148. Mr. Wright refused to return the child until an additional ticket was purchased. Id. Mr. Wright's interpretation of the parenting plan is incorrect. The plan allows airline regulations to control whether or not a chaperone is required. In other words, under the terms of the plan if the airline regulations allow MW to travel without an accompanying adult, she can travel by herself. CP 10-11. Mr. Wright's refusal to follow the airline regulations on the eve of MW's start of school following Spring Break left Ms. Verhalen with no choice but to seek immediate and emergent action.

B. The Notice provided by Ms. Verhalen did not violate due process.

The case law cited by the appellant in support of his proposition suggesting Mr. Wright's due process rights were violated are not applicable in this case. In the cases cited a parent was denied contact with their children. In this case Ms. Verhalen was not attempting to eliminate contact between the child and Mr. Wright, but

simply was trying to enforce the parenting plan. Under the terms of the parenting plan MW was to be returned to her mother, but Mr. Wright refused to do so in violation of the parenting plan. Mr. Wright's refusal to comply with the plan created an emergent situation which required immediate action. The issue of notice for short set hearing is addressed in Volume 3A of Washington Practice, Rules Practice CR 6 by Tegland which states that unreceived documents may be exchanged immediately prior to the hearing.

Generally, an emergency exception exists to notice requirements imposed by Court rules. Under CR6(d) the Court has the authority to shorten the notice requirement. Requests for writs of habeas corpus should be considered as soon as possible pursuant to *RCW 7.36.404*. In reviewing Mr. Wright's claim, the Court should keep in mind the issue on whether the child should be returned to the mother did not require complex briefing or extensive litigation. This appeal should be denied because not only did Mr. Wright have notice of the hearings, but had the opportunity to present an argument, and took that opportunity to explain his position to the Court. The elements of due process were met in this case.

Furthermore, the only issue before the Court was whether Mr. Wright's interpretation of the parenting plan was correct. Mr. Wright set forth his interpretation of the parenting plan both in email format to Ms. Verhalen and argued the same position to the Court. The question for the Court was factual in basis and merely required a review of the plain language of the parenting plan. No other declarations or briefing were necessary, or even helpful, to resolve the issue. The issue at hand, which did not change from the parties discussions prior to the hearing, was simple. Mr. Wright interpreted the plan to require an accompanying adult and would not return the child until such arrangements were made. The parenting plan specifies whether an accompanying adult is necessary shall be dictated by the airline regulations. CP 10-11. This was the only issue before the Court. A review of the parenting plan was the only action necessary to determine whether an order requiring Mr. Wright to return the child was necessary. Ms. Verhalen had made the arrangements for MW to fly as an unaccompanied minor and provided proof of those arrangements. Thus, the regulations of the airline were met, and MW could travel without an accompanying adult. The issue

was very simple. Mr. Wright did not file a motion to seek clarification of the parenting plan or modify the parenting plan at any time.

As indicated in Ms. Rau's declaration, the issue, request for return of the child, was discussed and notice of the hearing at 1:30 that day was provided at 10:13am on April 4, 2011. CP 102. Mr. Boldt's office experienced difficulties in receiving documents electronically. CP 103-104. Mr. Wright met with Mr. Boldt's assistant, Ms. Rau that morning. CP 103. Mr. Wright and his parents discussed his options at Mr. Boldt's office and consulted with Mr. Boldt. CP 112, 117. Mr. Wright presented a declaration for the 1:30 hearing which presented his position that he would allow for MW return to her mother only if a ticket for any adult to accompany MW was purchased. CP 86-100. Again, the parties were well aware that the only issue was whether Mr. Wright could withhold the child until another ticket was purchased for an adult to accompany MW on the flight to her mother's residence.

It was clear that Mr. Wright was not going to allow MW to fly unless such a ticket was purchased and Ms. Verhalen did not have the means to purchase a ticket. The standoff was known to the parties the morning of April 4, 2011 at the latest. CP 103. As indicated

previously in this brief the parties exchanged emails on this issue and their positions were known to each other well in advance of the April 4 hearings.

Mr. Wright has sufficient notice of the issue and also had a meaningful opportunity to be heard. As described above, Mr. Wright had notice that MW was going to fly as an unaccompanied minor two days before the hearing. CP 93. Mr. Wright had time to develop a strategy and take the position that he was not going to allow MW to return unless Ms. Verhalen purchased a ticket for an adult to accompany MW apparently after consulting with Mr. Boldt. CP 95. Mr. Wright can not demonstrate prejudice resulting from the short notice and response time. Mr. Wright has not asserted any other outcome that could be possible if a continuance was granted, nor does he demonstrate any prejudice which resulted from the short set hearing. Nor does Mr. Wright indicate what information he was unable to present to the Court. Furthermore, Ms. Verhalen's position was explained to Mr. Boldt's assistant and attempts were made to get the documents to Mr. Boldt as quickly as possible. The actual declaration of Ms. Verhalen was short and the majority of the documents consist of the mandatory forms related to execute the habeas corpus order

including a copy of the parenting plan and emails exchanged by the parties, which presumably were already in Mr. Wright's possession. Furthermore, Mr. Wright consented to the return of the MW to her mother. CP 7.

Mr. Boldt asserts that neither notice or an emergency existed. Neither of which are correct. Notice was provided, and all documents were sent to Mr. Boldt as soon as possible due to computer communication issues. The emergency of the situation has been clearly established. Not only was Mr. Wright refusing to return the child to her mother as required by the plan, but also his failure to return the child was going to interfere with the child's ability to attend school. Mr. Wright had notice of the issues presented and had the opportunity to be heard both in written form and through argument presented to the Court. Again, the Court should keep in mind that the only issue in dispute is whether Mr. Wright could refuse to return the child to the mother because the child was traveling as an unaccompanied minor rather than with an adult traveling with her. The parenting plan specifies the airline regulations shall control whether an accompanying adult is necessary. Mr. Wright's position had no basis in the parenting plan. Mr. Wright created an emergent situation

by violating the parenting plan immediately before MW's start of school. Now Mr. Wright is claiming the emergency prevented him from having his day in Court. Mr. Wright should not be allowed to use the emergency he created as a basis for reversing the Court's findings in this matter. It was anticipated Mr. Wright would be present at the 1:30 hearing. RP 2.

C. Proceeding in absence of counsel for Mr. Wright did not create a due process violation.

Mr. Wright has claimed his due process rights were violated because his counsel was not present at the hearings on April 4, 2011. When evaluating this claim the Court should keep in mind the record does not show that Mr. Boldt made any attempt to appear at the hearings either in person or via telephone, or that a new date for a hearing was proposed. Additionally, Mr. Wright proceeded to represent himself at the 3:30. RP 7-12. He did not seek a continuance and voluntarily agreed to return MW to her mother at the 3:30 hearing. Id. Additionally, Mr. Boldt had not filed a notice of appearance to indicate he was representing Mr. Wright at the time of the hearing, which was four years following the last court action between the

parties which occurred at the time the parenting plan had been filed.
CP 7-15.

D. THE DECISION OF JUDGE SPEARMAN DID
NOT VIOLATE KITSAP COUNTY LOCAL COURT RULES, CIVIL
RULES OR RULES OF JUDICIAL CONDUCT

Counsel for Mr. Wright cites to the Kitsap County Local Rules pertinent to Calendar Matters and matters proceeding to trial. Kitsap County has not issued any Court rules modifying CR 6. Consequently the provisions of CR 6 apply to this matter. As to the Kitsap County local rules cited by counsel for Mr. Wright, the hearings at issue in this case were presented as ex parte matters and were not noted on the domestic relations calendar due to the emergent nature compelling the enforcement of the parenting plan. Consequently, KCLR 77(k)(10)(c) applied. A petition for modification of the parenting plan has not been filed, consequently neither a temporary order or an trial would be appropriate. If this matter had not been heard on an ex parte basis, the first domestic relations calendar available to hear this matter would have occurred on April 8th. Assuming the motion would have been granted on April 8th, the child would have missed the first week of school following spring break due to the delay. Apparently

the father believes it is more important for this matter to be noted on the domestic relations calendar than for the child to be returned for the start of school following the break. There was no procedural error in this matter. There is no possible interpretation of the parenting plan that could support the father's argument in this matter. No other outcome would have been achieved if this matter had been noted on the domestic relations calendar rather than on an emergency basis other than the child would have missed school. Again, the argument presented in the materials before the court at this time through the motion for reconsideration are the same basic arguments Mr. Wright presented to the Court at the time of the ruling. Mr. Wright has not demonstrated a violation of local rule occurred, or that if a violation occurred prejudice resulted.

The emergent nature of these proceedings justified quick action with little advance notice. The case of *Schreifels v. Schreifels*, 47 Wash.2d 409, 287 P.2d 1001 (1955) is comparable to the matter at hand. That matter was also a habeas corpus proceeding involving custody of minor children. The Court gave a party only three hours notice of signing of findings of fact and conclusions of law. The court's determination of existence of an emergency would not be

disturbed and the decision was upheld. Notice was adequate in this matter and Mr. Wright fails to demonstrate his presentation would have been different if he had been given additional time to respond.

Furthermore, the Appellant claims Judge Spearman violated the rules of JUDICIAL Conduct by proceeding in the absence of Mr. Boldt. This argument is without merit. Mr. Wright had the ability to present his position to the Court at the 3:30 hearing and did so. RP7-14. Mr. Wright had the opportunity to be present at both hearings. Judge Spearman acted impartially at all times. The record indicates Judge Spearman considered the positions of both parties. Id.

E. No Violation of the Rules of Civil Procedure Occurred.

The issue presented by counsel for Mr. Wright on this issue is essentially the same as the claimed violation of Kitsap County Local Rules. As previously argued, CR6(d) allows the Court to shorten the time for notice. In order to prevail on this claim, Mr. Wright must demonstrate prejudice caused by the delay. To show prejudice Mr. Wright must demonstrate the following: lack of actual notice, a lack of time to prepare the motion, and no opportunity to submit cause authority or prevail countervailing oral argument. *State*

ex rel. Citizens Against Tolls (CAT) v. Murphy, 151 Wn.2d 226, 88 P.3d 375 (2004). In this case no prejudice can be established because Mr. Wright had actual notice of the hearing, had time to draft and file a response, which set forth the same position as provided in the current motion before the Court, and finally had the ability to present oral argument. Since the issue regarding the transportation arrangements for the child was fact specific, no case law provides insight on the matter of interpretation of the written parenting plan.

As noted by counsel for Mr. Wright, an emergency exception will waive the five day advance notice requirement. In this case an emergency did exist. Mr. Wright was withholding the child in violation of the parenting plan and furthermore was refusing to return the child prospectively unless the mother gave into his demand. Mr. Wright's position was contrary to the written parenting plan and put the child in jeopardy of missing school. Ms. Verhalen gave Mr. Wright advance notice that the child would be traveling as an unaccompanied minor by email. The language of the parenting plan allows the parents to have discretion to determine if an adult will accompany MW during her travels unless the airline requires otherwise. The issue at hand was not complicated. Mr. Wright sought to add a requirement

for an adult to travel with MW during her flight back to her mother, and Ms. Verhalen disagreed with his position. Again Mr. Wright has not demonstrated any prejudice by the short notice, or demonstrated that the outcome would have been any different if more time had been provided. In this matter the parental rights had been settled by the parenting plan. The parenting plan required the return of the child at the end of Mr. Wright's visitation period and did not allow Mr. Wright to add conditions to the return.

The habeas corpus statute was intended to address the type of situation as was in the present case. A parent was unwilling to following the parenting plan and return a child as required by a valid parenting plan. The materials presented on behalf of Ms. Verhalen set forth the position of both parties. Counsel for Mr. Wright has asserted incorrectly that the Court only heard from Ms. Verhalen and that the hearings were not hearings in the meaningful sense of the word. Both assertions are incorrect. Mr. Wright presented oral argument to the Court, which was considered by the Court at the time of the 3:30pm hearing. This claim is merit less. A hearing took place as required by statute. The two step process required on writ of habeas corpus was satisfied in this case. The writ was issued at

1:30pm and Mr. Wright appeared to contest the return of the child at the 3pm hearing. As previously stated, Mr. Wright's position as described in the written materials filed with the motion for reconsideration mirrors the argument Mr. Wright presented to the Court. Furthermore, Mr. Wright has never asserted that Ms. Verhalen was attempting to end his visitation time prematurely. This matter could not wait for Mr. Boldt's availability.

The child would have been harmed by Mr. Wright's persistent refusal to return the child even though she was to start school following spring break. This harm is not addressed in the brief filed by Mr. Wright's counsel. Mr. Wright made his intention to keep MW until Ms. Verhalen produced travel arrangements that met his approval. An attempt to resolve this issue outside of Court was made by counsel for Ms. Verhalen. Unfortunately, Mr. Wright would not change his position. As previously argued, the position Mr. Wright adopted was contrary to the parenting plan. Ms. Verhalen was left with no alternative but to seek an order of the Court which removed the child from Mr. Wright's custody, which effectively merely enforced the parenting plan previously entered. Mr. Wright's consistent refusal to follow the parenting plan required action. The Court properly

issued the warrant. In this case the warrant was not executed because Mr. Wright voluntarily brought the child to the 3pm hearing.

Counsel for Mr. Wright suggests that temporary orders should have been entered in lieu of the habeas corpus orders. Again the issue of the impending start of MW's school following spring break is ignored. This was not an issue that could wait a week to resolve. Immediate action was necessary. MW's education would have suffered if the hearing had been postponed. The facts of the present case are distinguishable from the case of *State Ex. Rel Ward Et Ux. V. Superior Court of Washington State, In And for Pierce County*, 38 Wash. 2d 431, 1230 P.2d 302 (1951). In that case the child at issue had been in the care of grandparents for an extended period of time. In this case Mr. Wright was merely exercising his visitation and decided he did not want to return the child because he did not agree with Ms. Verhalen's decision on using the airline's unaccompanied minor service. Additionally, the emergency was based on the need to get MW to school before school resumed, something apparently of no concern to Mr. Wright.

Counsel for Mr. Wright implies that the proceedings were a surprise and orders should not have been issued. The Court took

appropriate action in this matter. Counsel for Mr. Wright again cites a case which is not on point with the facts of the present case. In the case of *State v. Deschler*, 114 Wash. 507, 195 P.2 226 (1921) and *Viereck v. Sullivan v. Nichols*, 77 Wash 313(1914) all involve cases where the child had been left with a party for an extended period and a habeas corpus action was initiated to seek return of a child. That is not the case here. Mr. Wright had his spring break visit with MW and refused to return her as required. It was not in MW's best interest to violate the parenting plan and potentially interfere with her start of school following the break. No one has asserted that MW has special needs or any deficiencies that would cause her to be traumatized by flying as an unaccompanied minor, because no such issues exist.

F. The Court properly issued orders under the Habeas Corpus statutes of this State.

The habeas corpus statute was intended to address the type of situation as was in the present case. A parent was unwilling to following the parenting plan and return a child as required by a valid parenting plan. The materials presented on behalf of Ms. Verhalen set forth the position of both parties. Counsel for Mr. Wright has asserted incorrectly that the Court only heard from Ms. Verhalen and

that the hearings were not hearings in the meaningful sense of the word. Both assertions are incorrect. Mr. Wright presented oral argument to the Court, which was considered by the Court at the time of the 3:30pm hearing. This claim is merit less. A hearing took place as required by statute. The two step process required on writ of habeas corpus was satisfied in this case. The writ was issued at 1:30pm and Mr. Wright appeared to contest the return of the child at the 3:30pm hearing. As previously stated, Mr. Wright's position as described in the written materials filed with the motion for reconsideration mirrors the argument Mr. Wright presented to the Court. Furthermore, Mr. Wright has never asserted that Ms. Verhalen was attempting to end his visitation time prematurely.

Counsel for Mr. Wright asserts the warrant in aid of the writ of habeas corpus should not have been issued. The child would have been harmed by Mr. Wright's persistent refusal to return the child even though she was to start school following spring break. This harm is not addressed in the brief filed by Mr. Wright's counsel. Mr. Wright made his intention to keep MW until Ms. Verhalen produced travel arrangements that met his approval. An attempt to resolve this issue outside of Court was made by counsel for Ms. Verhalen.

Unfortunately, Mr. Wright would not change his position. As previously argued, the position Mr. Wright adopted was contrary to the parenting plan. Ms. Verhalen was left with no alternative but to seek an order of the Court which removed the child from Mr. Wright's custody, which effectively merely enforced the parenting plan previously entered. Mr. Wright's consistent refusal to follow the parenting plan required action. The Court properly issued the warrant. In this case the warrant was not executed because Mr. Wright voluntarily brought the child to the 3pm hearing. As argued previously, Mr. Wright voluntarily returned MW to her mother, as the parenting plan required. RP 7.

G. This Appeal is Moot

This appeal is moot and frivolous because Mr. Wright voluntarily returned MW to her mother. Mr. Wright ignores this fact and makes unsubstantiated claims of due process violations. Additionally, the issue is moot because this issue is resolved.

Mr. Wright was determined to enforce his version of the parenting plan and refused to allow MW to return to her mother until Ms. Verhalen complied with his demands. Mr. Wright continues to incorrectly interpret the parenting plan. As previously argued, the

parenting plan provides that the parties MAY designate an adult to travel with the child as REQUIRED by the AIRLINES (Provision 3.11 of the parenting plan with emphasis added). Two separate sentences specify an adult will accompany MW if the airlines require. The plan does not require arrangements be made for MW to be accompanied by an adult. MW is now of the age where the airlines do not require an adult to travel with MW. A paragraph later in the plan, language in the plan requires the parties to cooperate to facilitate travel. This provision is separate and does not apply to the accompaniment issue, which is specifically addressed in the previously paragraph. No possible reading of the plan requires the parties to agree on the whether MW shall be accompanied by and adult. Additionally, Mr. Wright voluntarily returned MW. RP 7.

In reviewing this issue, the Court should refer to the declaration of Travis and Cindy Wright as well as the declaration of Ms. Rau which confirm that the issue of controversy was known to everyone prior to the hearing. Again, this was not a complicated issue requiring extensive preparation. Habeas Corpus issues are to be resolved quickly by statute (see RCW 7.36.404) and have been previously addressed in a three hour period. See *Schreifels v.*

Schreifels, 47 Wash.2d 409, 287 P.2d 1001 (1955). Counsel's assertions that this matter was not handled appropriately are incorrect and not supported by law. This Court cannot provide effective relief in this matter. A decision was made to enforce the parenting plan. The plain language of the parenting plan indicates Ms. Verhalen's position is correct and the decision of the trial court should be upheld. If Mr. Wright attempts to wrongfully withhold MW from her mother again, the trial court should have a complete record of the past events between the parties. As argued previously, this matter is one of a factual dispute regarding the implementation of the parenting plan. An appropriate decision regarding the proper interpretation of the plan has been made and no further action should be taken. Mr. Wright's decision to voluntarily release MW to her mother indicates that he realized his position was not justifiable. It is puzzling why Mr. Wright continues frivolous litigation in this matter.

2. ATTORNEY FEES WERE PROPERLY AWARDED TO MS. VERHALEN BY THE TRIAL COURT AND ADDITIONAL ATTORNEY FEES SHOULD BE AWARDED.

As argued throughout this motion, there is no rational basis for Mr. Wright's interpretation of the parenting plan. Therefore, it appears

that this litigation is harassing in nature and this appeal is frivolous. The initial award of attorney fees should stand, and additional attorney fees should be awarded to Ms. Verhalen for the necessity of responding to this frivolous appeal.

A trial court's decision to award frivolous litigation attorney fees is within the discretion of the trial court and should not be disturbed absent a clear showing of abuse. The inquiry of the Court of Appeal should be whether a Judge's exercise of discretion was manifestly unreasonable or based on untenable grounds or reasons. *Reid v. Dalton*, 124 Wn.App. 113, 100 P.3d 349 (2004); *RCW 4.84.185* In this case the trial court awarded attorney fees and costs in the amount of \$770. RP 11 It was clear from the record that Mr. Wright was not going to voluntarily return the parties' daughter to Ms. Verhalen. Therefore, court action to enforce the parenting plan was necessary. Attorney fees were properly awarded to compensate Ms. Verhalen for the court action that was necessary by virtue of Mr. Wright's incorrect interpretation of the parenting plan which manifested in his refusal to allow the parties' child to return to her home with her mother.

An appeal is frivolous in the context of awarding attorney fees as sanctions against the appellant if after considering the entire record the appellate court is convinced that the appeal does not present any debatable issues upon which reasonable minds may differ and the appeal is so devoid of merit that there is no possibility of a reversal. *RAP 18.9(a)*. As identified throughout this brief, vital points of law have been ignored and irrelevant case law has been provided. Additionally, even after a careful consideration of the entire record in this case it is clear that there are not genuine debatable issues. It is clear that Mr. Wright had notice of the issue regarding the return of the child, he withheld the child contrary to the parenting plan, and he voluntarily agreed to return the child to Ms. Verhalen. Now despite he agreement to return the child Mr. Wright is not arguing his Constitutional rights were violated by the trial Court. Mr. Wright's position is not well founded. This Court should award attorney fees to Ms. Verhalen. An affidavit of attorney fees is filed separately.

V. CONCLUSION

This court should summarily dismiss Mr. Wright's appeal and should award attorney fees to Ms. Verhalen. Ms. Verhalen is

requesting the opportunity to supplement this brief in the event her request to file a cross petition on the trial court's denial of her request for attorney fees by the trial court is granted for review by this court.

DATED THIS 14th day of December, 2011.

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DATED THIS 13th day of December, 2011.



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(360) 876-5567

I, Diane Sykes-Knoll, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Respondent's Brief in the above-captioned case hand-delivered or mailed as follows:

Original Respondent's Brief e-mailed To:

Clerk of Court
coa2filings@courts.wa.gov

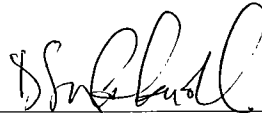
Copy of Respondent's Brief Mailed To:

James Boldt, Attorney for Appellant
PO Box 16045
Shelton, WA 98584

Copy of Respondent's Brief Mailed To:

Sheila Verhalen
167 Silver Fox Dr.
Saint Marys, GA 31558-4581

DATED this 13th day of December 2011.



Diane Sykes-Knoll
Legal Assistant